IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	**:**	
	:	
v.	**:**	**No. 1419-2012**
	:	**CRIMINAL**
BARBARA GRUVER,	**:**	
Defendant	**:**	

OPINION AND ORDER

The Defendant filed a Petition for Habeas Corpus on September 20, 2012. By agreement of both parties, the Court will decide the Petition based on the transcripts of the Preliminary Hearing held in this matter on August 17, 2012 before Magisterial District Judge Jon Kemp.

Background

At the Preliminary Hearing, Todd A. Gruver (Gruver) testified and the following facts are based on his testimony. On August 5, 2012, prior to 7:30 PM, Gruver was driving around looking for his wife Barbara Gruver (Defendant). Gruver believed that the Defendant had been drinking and was concerned as to whether she could safely drive back home. Around 7:30 PM, the Defendant called Gruver and stated that she was at home. A few minutes later, Gruver arrived at the residence located on Gardner Road, Unityville, PA and the Defendant and him engaged in normal conversation. Gruver could tell, however, that the Defendant was intoxicated. The Defendant's sister arrived at the residence and after a short period of time stated that she was going to dinner with someone and left.

After the Defendant's sister left, the Defendant and Gruver began to argue. The Defendant told Gruver that he was going to sleep on the couch and Gruver replied that he would not and that there was plenty of room in the bed for them to sleep without touching each other.

The Defendant stated numerous times that she hated him and began to slap, kick, and punch the Defendant. The Defendant got on the phone multiple times and appeared to make phone calls to police reporting a domestic violence incident. The Defendant threw the phone on the deck of the porch and they kept arguing. Gruver stated "do whatever you want cause I'm not leaving, I'm staying here until the cops get here." The Defendant responded by stating "screw it and I'm just going to kill you," and ran into the house. N.T., August 17, 2012, p.5. Gruver believed that the Defendant was going after a gun and pursued her. The Defendant went to the dining area and struggled with Gruver to get a hold of one of the two (2) unloaded guns hanging on the wall. The Defendant then walked through the bedroom towards a door to the porch, where a cocked and loaded gun was located.[1] Gruver stated that "she went out that door and grabbed that [gun] and just as I was coming up behind her she was in the process of trying to turn it on me and shoot me with it. I took it away from her." Id. at 7.

The Defendant then went into the kitchen and picked up a frying pan with which she tried to hit Gruver. He took the pan from her and placed it in the sink and then attempted to leave the residence. Defendant and Gruver had another altercation and Gruver pushed back on the Defendant and left the residence, got into a truck, and went to a nearby neighbor's house. Gruver parked the truck in the neighbor's drive way and went to the door, but nobody was at home. Gruver then called the police believing that the Defendant had already called them, but learned that she in fact did not. Gruver followed police instruction to stay at the driveway. After a few minutes, Gruver saw the Defendant in a truck drive recklessly at a high rate of speed out of their home's driveway towards his location. Gruver got back into his truck and backed out of the driveway. As Gruver was about to continue down the road the Defendant rear ended the back of

[1] This gun belong to the Defendant and was used for shooting at groundhogs around the residence.

his truck. Gruver was able to pull away and through his rear view mirror saw the Defendant get out of her vehicle with a gun. Gruver laid flat over the middle console of his vehicle while still being able drive when he heard a noise and heard glass break. Gruver looked at the window and determined that she had shot at him and hit the rear window of the truck. The Commonwealth introduced exhibit #1, a photograph of the back of the truck, which shows that the back passenger side window was shattered.

The Defendant was charged with one count of Criminal Attempt,[2] a felony of the first degree; two counts of Aggravated Assault,[3] felonies of the first degree; two counts of Aggravated Assault,[4] felonies of the second degree; and numerous other offenses. On September 20, 2012, the Defendant filed a Petition for Habeas Corpus alleging that the Commonwealth failed to establish a *prima facie* case for Count 1, Criminal Attempt/Homicide; and Count 6 and 7, Person Not to Possess Firearms. On December 6, 2012, at the hearing for the motion, the Defendant indicated that the only issue was in regards to Count 1, Criminal Attempt/Homicide and that the Person Not to Possess Firearms issues were withdrawn.

Discussion

In her Petition for Habeas Corpus, the Defendant, through her attorney, contends that the Commonwealth failed to present a *prima facie* case for the charge of Criminal Attempt/Homicide against the Defendant. The principal function of a preliminary hearing is to protect an individual's right against an unlawful arrest and detention. Commonwealth v. Mullen, 333 A.2d 755 (Pa. 1975). A preliminary hearing is not a trial and the Commonwealth only bears

[2] 18 Pa.C.S. § 901(a).
[3] 18 Pa.C.S.A. § 2702(a)(1).
[4] 18 Pa.C.S.A. § 2702(a)(4).

the burden of establishing at least a *prima facie* case that a crime has been committed. Commonwealth v. Prado, 393 A.2d 8 (1979).

> A prima facie cases exists 'when the Commonwealth produces evidence of each of the material element of the crime charged and establishes probable cause to warrant the belief that the accused committed the offense. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury.'

Commonwealth v. Weigle, 997 A.2d 306, 311 (Pa. 2010) (citing Commonwealth v. Karetny, 880 A.2d 505, 513 (Pa. 2005). The Commonwealth need not establish guilt beyond a reasonable doubt.

"A person commits an attempt when, with the intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime." 18 Pa.C.S.A. § 901(a). For the charge of Attempted Homicide, "the Commonwealth must establish that the accused took a substantial step towards committing homicide, with the specific intent to kill." Commonwealth v. Packard, 767 A.2d 1068, 1071 (Pa. Super 2001). Such specific intent may reasonably be inferred form the accused's use of a deadly weapon on a vital part of the victim's body.[5] Commonwealth v. Hobson, 604 A.2d 717 (Pa. Super. 1992). A "deadly weapon" is defined as "[a]ny firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which, in the manner in which it is used or intended to be used, is calculated or likely to produce death or serious bodily injury." 18 Pa.C.S. § 2301.[6]

[5] Further, "[a] specific intent to kill can be inferred form the circumstances surrounding an unlawful killing." Commonwealth v. Sattazahn, 631 A.2d 597, 602 (Pa. Super. 1993).

[6] "Serious bodily injury" is defined as "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." 19 Pa.C.S. § 2301.

In support of their case, the Defendant cites to Roche. Commonwealth v. Roche, 783 A.2d 766 (Pa. Super. 2001). In Roche, the defendant followed the victim outside after an argument in a bar. Id. 767. The defendant asked the victim "Are you a tough guy?" and delivered a closed fist blow to the victim's left eye. Id. The victim suffered an orbital blowout and facial fractures, which caused him to spend five days in the hospital. Id. The Pennsylvania Superior Court stated:

> During the initial encounter in the bar, Appellant did not threaten the victim with harm or injury but merely challenged him to arm wrestle and briefly pushed the victim when the victim declined his offer. When the victim exited the bar and Appellant followed, Appellant again did not specifically threaten the victim with injury or insinuate that he would cause physical harm to the victim, aside from Appellant's childish inquiry as to whether the victim thought he was a "tough guy." After Appellant delivered: his lone, ill-advised punch with his hand, he ceased his attack immediately and did not continue to strike the victim while the victim was lying motionless on the ground nor did Appellant pursue or extend his attack to the victim's companion. Appellant offered no indication that he intended to inflict further harm. Moreover, and importantly, Appellant did not possess or use a weapon or other instrumentality of harm at any time before or during this attack.

Id. at 770-71. The Superior Court vacated the Defendant's sentence for the charge of Aggravated Assault. But see Commonwealth v. Patrick, 933 A.2d 1043 (Pa. Super. 2007) (finding that a single blow on an unsuspecting victim that causes serious bodily injury established a *prima facie* case for Aggravated Assault); Commonwealth v. Burton, 2 A.3d 598 (Pa. 2010) (ruling that a single blow to an unsuspecting victim had sufficient evidence to support a conviction of Aggravated Assault).

Besides Roche applying the charge of Aggravated Assault, the facts are completely dissimilar to the facts in this case. Here, the Defendant told Gruver that "I'm just going to kill you" and actively sought a gun in the house. The Defendant also pursued Gruver with her car, struck his vehicle, got out of her vehicle and intentionally fired a shot at Gruver. The facts of

this case do not show Defendant did not state her intent to cause harm or only delivered a single blow from a closed fist and walked away.

In Donton, a defendant told his son that he was going to kill his separated wife, who lived in another county ninety (90) miles away, loaded a gun, and left the residence. Commonwealth v. Donton, 654 A.2d 580, 583 (Pa. Super. 1995). The son called police after reading letters left by the defendant indicating he was going to kill his wife. Id. Police informed the wife to turn off all lights in the house and they waited for the defendant. Police witnessed the defendant drive by the residence twice at a slow rate of speed. Id. The police stopped the defendant's vehicle and a loaded rifle was located next to him. Id. After a jury trial, the defendant was found guilty of Attempted Murder and other related crimes. Id. The Pennsylvania Superior Court affirmed the conviction stating that "Appellant's admissions to his son, and those in his letters, explained his intentions to use the weapon on that night." Id. at 585.

While the Defendant in this case did not memorialize her intent in letters or tell someone else that she intended to kill Gruver, she specifically told Gruver she wanted to kill him. In addition, Gruver prevented the Defendant from using guns located in the residence numerous times. At one instance the Defendant grabbed a gun and turned to point it at Gruver before he took the gun from her. After Gruver left the residence, the Defendant drove after him and fired a shot at Gruver's vehicle. As Gruver believed that the Defendant was going to fire at the vehicle he was operating he laid down over the middle console of his truck. The shot fired by the Defendant, which hit the back passenger window of the pick up truck, would have been feet or even inches from Gruver's head. The close proximity of the shot indicates an intent to kill. As the Commonwealth need not prove the elements of the crime beyond a reasonable doubt but merely establish a *prima facie* case, this Court finds that there was sufficient evidence that the

Defendant took a substantial step towards committing homicide and did so with the specific intent to kill.

ORDER

AND NOW, this _____ day of January, 2013, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Habeas Corpus is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc. DA (MK)
PD (WM)